NG TANG CHI

v.

TAN SRI DATUK CHANG MIN TAT & ORS; CHEAH SWEE AUN (INTERVENER)

HIGH COURT MALAYA, PULAU PINANG
MOHAMED DZAIDDIN J
[ORIGINATING MOTION NO: 32-65-1988]
14 OCTOBER 1988

ADMINISTRATIVE LAW: *Administrative powers - Commission of enquiry - Right of party represented to cross-examine witnesses and obtain copies of reports tendered - Whether at the discretion of commissioners - Whether refusal amounts to wrong exercise of discretion - Commissions of Enquiry Act 1950, ss. 8, 11, 18, 21(2) & 22*

An enquiry was held to identify the probable cause for the collapse of a passenger terminal platform at Pengkalan Sultan Abdul Halim, Butterworth. The plaintiff's daughter was a victim in the collapse and so, pursuant to the Commissions of Enquiry Act 1950 ('the Act'), he was represented by a counsel at the enquiry. His counsel's request to be supplied with the relevant reports and plans was refused by the chairman of the commission of enquiry who was of the view that not only was counsel disentitled to the said documents but he was also not allowed to cross-examine witnesses. Thus the plaintiff, relying on s. 18 of the Act and the rules of natural justice, commenced this application for a declaration that his counsel be entitled to cross-examine all witnesses and that copies of all written evidence of the commission of enquiry be supplied to him.

Held:

[1] The plaintiff and his counsel were present at the enquiry not because of s. 18 of the Act but due to the fact that it was a public enquiry where members of the public are entitled to attend and their participation was at the discretion of the chairman.

[2] By s. 11 of the Act, evidence taken under the Act shall not be admissible in any civil or criminal proceedings against the person who gave evidence and under s. 21(2) of the Act, all evidence given for the purpose of the Act shall be absolutely privileged so that the witness giving such evidence shall not be liable to any suit in respect of such evidence. Section 8 of the Act provides that the commissioners may examine all persons as witnesses as they think necessary or desirable and s. 22 of the Act clearly

stipulates that the procedure to be followed shall be at their discretion. Therefore, the prayers asked for in this application came within the discretion of the commissioners. The chairman of the commission had acted within his discretion in refusing to accede to counsel's request and he had exercised his discretion correctly.

[Application dismissed.]

Legislation referred to:
Commissions of Enquiry Act 1950, ss. 2(1)(d), 8, 11, 18, 21(2), 22
Specific Relief Act 1950, s. 44

For the plaintiff - K Balasundaram (N Shanmugam; (M/s Shan & Gooi with him)) M/s Balasundaram & Co
For the defendants - Zulkifli Bakar State Deputy Legal Adviser

Reported by S Dharmendran

JUDGMENT

Mohamed Dzaiddin J:

By this originating motion, the plaintiff, whose daughter was one of the victims in the collapse of the passenger terminal platform at Pengkalan Sultan Abdul Halim, Butterworth on 31 July 1988, prays for a declaration that his counsel be entitled to cross-examine all witnesses and be given access to and supplied with copies of all written evidence of the Commission of Enquiry instituted under the Commissions of Enquiry Act 1950 ('the Act') *vide* PU (B) 379 dated 4 August 1988. Alternatively, the plaintiff prays for this court to exercise its powers under s. 44 of the Specific Relief Act 1950 directing the commissioners to grant the plaintiff similar orders as prayed above.

The plaintiff commenced his application after what transpired at the commission of enquiry's hearing on 2 and 28 September respectively. In his affidavit, he deposed that at the preliminary meeting of the commission held on 2 September 1988, the chairman briefed those present about the procedure to be followed in the enquiry. His counsel, Mr Balasundaram requested that in view of the complexity and technical nature of the enquiry, counsel representing persons interested in the enquiry be given copies of the reports and plans beforehand to facilitate the saving of time and to be well equipped for counsel to cross-examine witnesses. To this request, the chairman was of the view that counsel were not entitled to the reports and plans nor would they be allowed to cross-examine witnesses. Then, when the enquiry formally commenced on 28 September 1988 and after two witnesses had given evidence and tendered reports pertaining to the Penang Port Commission investigation

of the probable cause of the collapse of the terminal, Mr Balasundaram requested the chairman for copies of these reports. The enquiry was adjourned to enable the chairman for consider this application. After the resumption, the chairman ruled that the copies of the report tendered would not be made available to counsel.

Mr Balasundaram for the plaintiff, in this application, relied on the provisions of s. 18 of the Act and the rule of natural justice. The relevant part of s. 18 reads as follows:

> *Any person* whose conduct is the subject of enquiry under this Act, or *who is in any way* implicated or *concerned in the matter under enquiry, shall be entitled to be represented by an advocate* at the whole of the enquiry; and any other person who may consider it desirable that he should be so represented may, by leave of the Commissioner or Commissioners, be represented in the manner aforesaid ... (Emphasis added).

Counsel submitted that s. 18 must be read in the context of s. 2(1)(d), the relevant part of which states:

> 2 (1) The Yang di-pertuan Agong may, where it appears to him to be expedient so to do, issue a Commission appointing one or more Commissioners and authorising the Commissioners to enquire into -
>
> (d) any other matter in which any enquiry would, in the opinion of the Yang di-Pertuan Agong, be for the public welfare ...

Hence, counsel submitted that the plaintiff came within the second part of the first limb of s. 18, *ie*, any person who is in any way concerned in the matter under enquiry read together with s. 2(1)(d) because his daughter was one of the victims in the 'crash' and that he was entitled to know the cause of death and the persons responsible for her death.

In my opinion, the better view is that he may come under the second category of s. 18 as 'any other person who may consider it desirable that he should be so represented'. Such being the case, he may, by leave of the commissioner, be so represented at the enquiry. However, no leave was applied by him to the commissioner. On the other hand, it is clear to me that the plaintiff's presence and that of his counsel at this enquiry are not because of s. 18, but must be due to the fact that it a public enquiry where members of the public are entitled to attend and their participation must be at the discretion of the chairman. It is worth mentioning here that the plaintiff in the present application is not applying for a declaratory order that he be made a party within the meaning of s. 18. What he is seeking to and supplied with copies of reports for the purpose of cross-examining witnesses. It must not be admissible in

any civil or criminal proceedings against the person who gave evidence and, under s. 21(2) all evidence given for the purpose of the Act, shall be absolutely privileged so that the witness giving such evidence shall not be liable to any suit in respect of such evidence.

That being the position, as I see it, the prayers asked for in this application, in my opinion, come within the discretion of the commissioners. Section 8 of the Act, *inter alia*, provides their powers relating to the procuring, receiving, of evidence and to examining all persons as witness as the commissioners may think it necessary or desirable to examine. In addition, it is clearly stipulated in s. 22 that the procedure to be followed shall be in their discretion.

On the issue of natural justice, I feel the point taken up by counsel at this stage is irrelevant and misplaced.

Therefore, after considering this application, I am satisfied that I have not been persuaded to make a declaratory order against the exercise of the discretion of the commissioners. Based on the facts as stated in the affidavit of the plaintiff concerning matters which transpired during the preliminary hearing and the formal sitting of the commissioners on 28 September 1988, and the subsequent meeting of the commissioners with counsel, I find the chairman of the commission had acted within his discretion in refusing to accede to counsel's request. Further, I am satisfied that he had exercised his discretion correctly. In the result, the plaintiff's application is refused. I make no order as to costs.